

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CHRISTOPHER ALAN LEVINGSTON §
VS. § CIVIL ACTION NO. 1:13-CV-110
JOHN D. KIMBOROUGH, *et al.*, §

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, Christopher Alan Livingston, an inmate currently confined at the Boyd Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brings this civil rights action pursuant to 42 U.S.C. § 1983 against defendants John D. Kimborough, Sheriff Mike White, Linda Gore, Wayne H. Jones, Cimron Campbell, and Captain Janis Straus.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends plaintiff's claims against the defendants should be dismissed without prejudice for failure to serve within 120 days pursuant to Federal Rule of Civil Procedure 4(m).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

After receiving objections to the Report and Recommendation, the Magistrate Judge entered an order to show cause giving plaintiff an additional opportunity to explain why he could not serve the defendants. The Magistrate Judge specifically inquired into whether plaintiff was claiming indigency as a factor. In his response, plaintiff states he is not indigent and failed to provide any other information that would support good cause for failure to serve pursuant to

Federal Rule of Civil Procedure 4(m). Based on the foregoing, the court finds plaintiff's objections lacking in merit.

ORDER

Accordingly, the objections of plaintiff are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

So **ORDERED** and **SIGNED** this 5 day of **March, 2014**.



Ron Clark, United States District Judge